

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:07CR304
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
KEITH POLK,)	
)	
Defendant.)	

The Court has received the Revised Presentence Investigation Report ("PSR") and the parties' objections thereto (Filing Nos. 75, 76). See "Order on Sentencing Schedule," ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The parties have objected to the quantity of controlled substance attributable to the Defendant and the base offense level 32 set out in ¶ 49.¹ The plea agreement reached pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) requires a base offense level of 28 based on a finding beyond a reasonable doubt that the Defendant be held responsible for at least 400 but less than 700 kilograms of marijuana. The Court's tentative findings are that, absent unusual circumstances, the plea agreement should be upheld and the base offense level should be calculated as level 28.

IT IS ORDERED:

1. The Court's tentative findings are that the parties' objections (Filing Nos. 75, 76) to the PSR are granted;

¹The Defendant also objects to the factual statements regarding drug quantity in ¶¶ 35-42.

2. The parties are notified that my tentative findings are that the PSR is correct in all other respects;

3. If **any** party wishes to challenge these tentative findings, the party shall file, as soon as possible but in any event before sentencing, and serve upon opposing counsel and the court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this order, my tentative findings may become final;

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 21st day of April, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge